

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARCUS E. FOUNTAIN,)	
)	8:07CV353
Petitioner,)	
)	MEMORANDUM
v.)	AND ORDER
)	
DENNIS BAKEWELL and State)	
Attorney General of the State)	
of Nebraska,)	
)	
Respondents.)	

Petitioner has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 (filing 1), a motion to proceed in forma pauperis (filing 2), and a copy of his institutional trust account statement (filing 5).

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. 28 U.S.C. § 1914(a). The court has reviewed the application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1)-(2). (The court recognizes that the provisions of 28 U.S.C. § 1915(b) do not apply to habeas cases. *See Malave v. Hedrick*, 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because the petitioner's trust account shows that the petitioner had an average monthly balance of \$100 or more in the petitioner's account for the six-month period immediately preceding the filing of the petition, the court concludes that the petitioner must be required to pay the \$5.00 filing fee because the petitioner has the financial ability to do so. *See* 28 U.S.C. § 1915(a). No further review of this case shall take place until the fee is paid.

IT IS THEREFORE ORDERED:

1. The petitioner's motion to proceed in forma pauperis

(filing 2) is denied.

2. The petitioner is granted until November 5, 2007, to pay the \$5.00 filing fee. The petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.
3. The Clerk of Court is directed to set a pro se case management deadline in this case using the following text: November 5, 2007: deadline for petitioner to pay \$5.00 filing fee.
4. No further review of this case shall take place until the filing fee is paid.

October 4, 2007.

BY THE COURT:

s/ Richard G. Kopf

United States District Judge